

# General Terms and Conditions - IMM Maschinenbau GmbH

## §1 Prices

All prices are stated ex works and exclude packaging. The currently valid price at the time the order is placed applies. Should delivery be completed more than 4 months after the contract is completed, the list price on the delivery date applies. If the price has increased by more than 5%, the purchaser has the right to withdraw.

## §2 Delivery

Shipping and delivery proceed at cost and risk to the purchaser. The risk transfers to the purchaser at assignment of the good(s) for shipping. Conditions that were not foreseeable at the time the contract was issued, such as defects in raw materials and adjuvants or hindrance through force majeure (war, civil unrest, strikes, etc), entitle the purchaser to withdraw from the contract by means of written notification of the seller, to the extent that these conditions make the delivery of the ordered good(s) impossible. In the case of a temporary hindrance to the delivery for which the seller is not culpable, the seller is entitled to extend the agreed upon delivery deadline by the duration of the hindrance.

## §3 Payment Terms

Invoices are paid within 14 days receive a discount of 2%. Those paid within 30 days are payable in the full amount without discount. Payment for deliveries of replacement parts or repairs is due on receipt, pure net. Bills of exchange and checks will only be accepted under special arrangement and then only if free of costs and fees for the seller. Acceptance only proceeds conditionally in these cases.

## §4 Material Defects

The seller is liable for material defects under the following terms:

- a) All parts or shipments evincing a material defect within the limitation period will be repaired free of charge, replaced or supplied again at the seller's discretion, to the extent that the cause [of the defect/s] was not already obvious at the time of transfer of risk.
- b) Warranty claims expire in 12 months. The period begins with the transfer of risk as described under §10 below. This present provision does not apply to the extent that the law in §438 Para. 1 Nr. 2 of German Civil Code (buildings and objects that are used for a building in accord with their customary use), in §479 of German Civil Code (Right of recourse) and in §634 a) German Civil Code (structural defects) does not require longer periods.
- c) The purchaser is obligated to notify the seller of any material defects in writing and without delay.
- d) In the case of any complaints of defect, payments made by the purchaser may only be withheld to the extent that they represent an appropriate ratio to the evident defect. The purchaser can only withhold payments, if he has asserted a complaint of defect in writing and the justification of this claim is not subject to doubt. If the complaint of defect proved unjustified, the seller is entitled to demand compensation from the purchaser for the expenses incurred.
- e) The seller must always be granted the opportunity to provide remedy within a reasonable period of time.
- f) If the remedy is unsuccessful, the purchaser –irrespective of any right to assert damage claims – has the right to withdraw from the contract or reduce compensation. The purchaser cannot demand anything for futile efforts or expenses.
- g) No claims of defect can be asserted if it is only a matter of insignificant deviation from the agreed-upon construction [composition], in the case of merely insignificant impairment of utility, natural wear or damages that occurred after the transfer of risk and as a result of improper or negligent handling, excessive operational demands, use of improper operating consumables, defective or unsuitable materials or which result from unusual external influences that are not assumed under terms of the contract. If the purchaser or third parties undertake improper modifications or repairs, no claim of warrantable defect exists for damages that result from them.
- h) Claims on the part of the seller for expenses required at the time of remedy, especially costs for transport, shipping, work and materials, are excluded, to the extent that these expenses are incurred because the object of delivery was later transferred to a location other than the seller's business location, unless this transfer was necessary to fulfil its intended use.
- i) Purchaser's claims to right of recourse against the seller exist only to the extent that the purchaser has made no arrangements with his buyer that go beyond the legal warranty claims. The provision in lit. h) above applies analogously to the scope of the purchaser's right of recourse against the seller.
- j) The provision under §7 below also applies for damage claims (other claims to compensation for damages). More extensive or other claims arising from material defects than those specified in this §4 on the part of the purchaser against the seller and his subcontractors or agents are excluded.
- k) The provisions above in this §4 apply analogously to the extent that the object of contract is not a shipment of goods but a service of another kind (especially repair services) provided by the seller.

## §5 Reservation of Title

The delivered good remains property of the seller until the agreed-upon purchase price has been paid in full and all claims deriving from the business relationship between the purchaser and seller, current or future, have been settled, including all subsidiary claims and §3. To the extent that the value of all security interests to which the seller is entitled should exceed the total amount of all secured claims by more than 20%, the

seller will release a corresponding portion of the security interests at the purchaser's request. The purchaser has the right to resell or re-process the good subject to reservation of title in the framework of regular and ordinary business transactions.

The purchaser cedes to the seller claims deriving from resale in the amount of the particular invoiced value of the good subject to reservation of title in advance and at the time the order is placed. The seller is authorized to collect on these claims. The purchaser is not entitled to take out liens or collateralize the goods subject to reservation of title in any form whatsoever. In case of processing the good subject to reservation of title, the seller becomes the co-owner of the new good in proportion to its value. The assertion of the reservation of title and the seizure of the good delivered by the seller is not considered equivalent of withdrawal from the contract. The seller is obligated, to the extent that the value of existing security interests exceeds open claims by more than 20% to declare release on the request of the purchaser.

The purchaser is obligated to inform the seller immediately of any claim asserted over the good subject to reservation of title.

## §6 Check/Bill of Exchange Clause

If in connection with payment of the purchase price by the purchaser, an obligation to accept the bill of exchange or check is established for the seller, the reservation of title along with the claims that derive from the delivery of goods and form its basis only expire when the payment is cleared by the purchaser as payer.

## §7 Other Claims to Compensation for Damages

- a) Damage claims on the part of the purchaser, regardless of their legal basis, but especially on account of breach of responsibilities deriving from the contractual obligation or from impermissible acts are excluded.
- b) This does not apply where liability is legally mandated, such as under the Product Liability Act, in cases of malicious intent, gross negligence, in cases of injury to life, limb or health, where assurance of freedom from defect was given or failure to fulfil essential contractual duties. Compensation for failure to fulfil essential contractual duties is limited however to damages that are typical for the type of contract and which were foreseeable, insofar as these do not result from malicious intent or gross negligence or it is not a case of liability deriving from injury to life, limb or health or from assurance of freedom from defect. Any change in the burden of proof to the disadvantage of the purchaser is not associated with the rules state above.

## §8 Right to Withdraw

The seller is entitled to withdraw from the contract irrespective of the legal right of withdrawal,

- the purchaser violates his obligations with respect to the good subject to reservation of title
- petitions for settlement or bankruptcy are submitted against the purchaser's assets or measures of legal enforcement [initiated by] third parties endanger the seller's claim on the purchase price.

## §9 Unenforceability of a Clause/Contradictory Provisions

Should one of the provisions under these general terms and conditions prove or become unenforceable, the enforceability of the remaining provisions remains unaffected.

These general terms and conditions of business apply for all contractual relationships with the seller, including future ones. Other terms will not become content of contract, even if the seller does not explicitly contradict them.

## §10 Transfer of Risk

Risk transfers to the purchaser, even when carriage paid delivery has been agreed upon:

- a) For delivery without assembly or installation when the operationally ready shipment is brought to or picked up by shipping. Packaging will proceed with all due caution. Shipment proceeds according to the best judgment of the supplier. On request from and at cost to the ordering party, the shipment will be insured by the supplier against damages from breakage, transportation and fire.
- b) For delivery with assembly or installation, on the day [the good] is accepted at the ordering party's place of business. To the extent that test operation has been arranged, after fault-free test operation. It is assumed that the test operation or acceptance in the [purchaser's] own place of business immediately follows the operationally-ready assembly or installation. If the ordering party does not make use of the offer of test operation or acceptance in his own place of business, then risk transfers to the ordering party after 14 days elapse from the time of the offer and includes the risk for the waiting period.
- c) If shipping, delivery or the start or completion of assembly or installation is delayed at the request of the ordering party or for reasons for which he is responsible, then risk is transferred to the ordering party for the duration of that delay. However, the supplier is obligated to affect the insurance coverage demanded by the ordering party on request from and at cost to the ordering party.

## §11 Place of Fulfilment/Court of Jurisdiction

a) If the purchaser is a registered merchant, the sole court of jurisdiction for any disputes arising directly or indirectly from the contractual relationship is the seller's headquarters. The seller however also has the right to bring legal complaints at the headquarters of the purchaser.

b) Place of fulfilment is Laichingen. For contractual conditions, German material law applies under exclusion of the U.N. Convention on Contracts for the International Sale of Goods.